



IDAHO
LEGAL
HISTORY
SOCIETY

EST. 2005

Idaho Statehood

JULY 3, 1890

125
years



CALENDAR

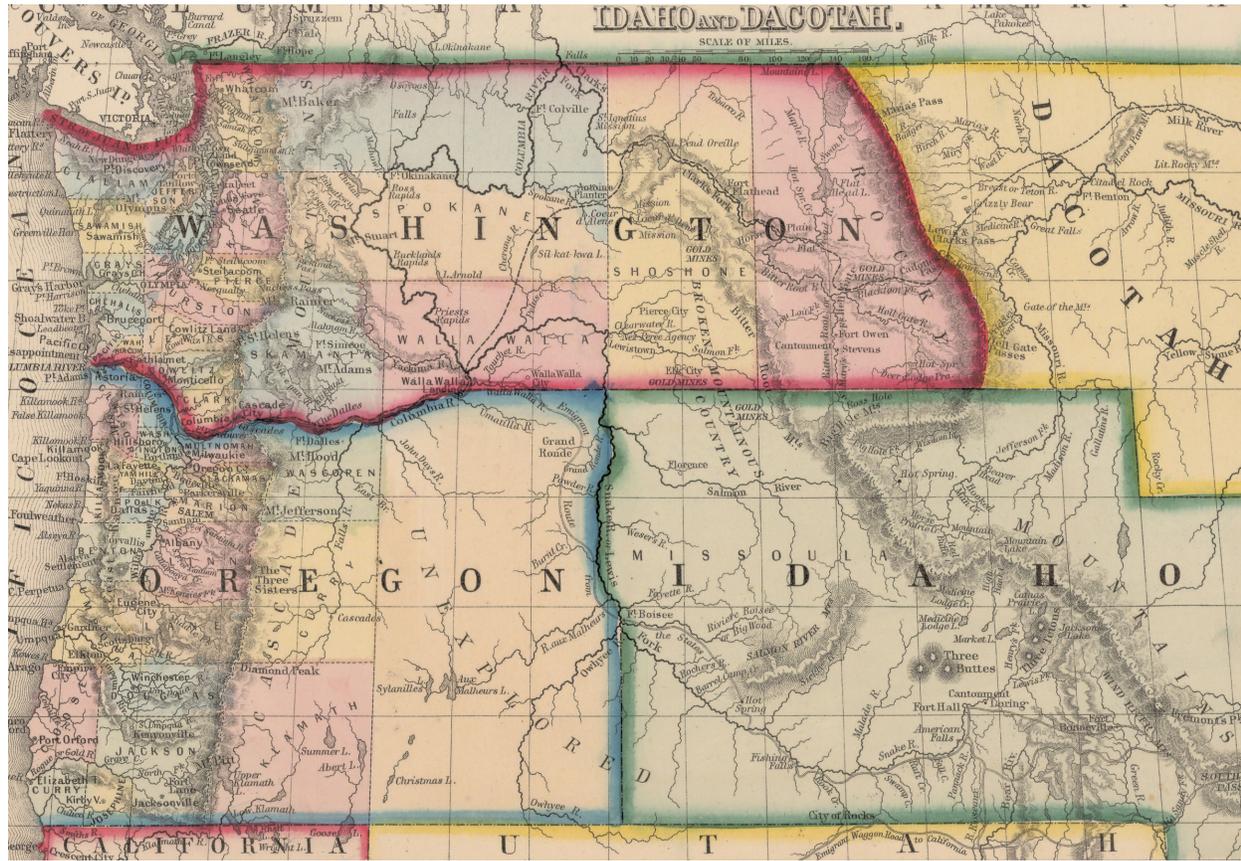
Idaho Legal History Society
Full Membership Meeting
October 14, 2015, 4:00 p.m.
Parsons Behle & Latimer
8th & Main, Suite 1300
Boise, Idaho

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Idaho Taking Shape Politically and Geographically

The proposed map of the Territory of Idaho was created by Lieutenant John Mullan in 1863. He wanted to include the pan-handle of Idaho into Washington, but his efforts were thwarted when William Wallace's map passed the House and Senate. In spite of the support Mullan had to become Idaho's first governor, political rival Wallace also beat him to that. *Photo credit: Idaho State Historical Society, ID: 1860_OR_WA_ID_DA_Mitchell by S. Augustus Mitchell*



“[T]he most serious obstacle to my mind in the way of your [Idaho’s] admission into the Union . . . is the question of Mormonism Now your constitution will be very carefully scanned upon that question.”

— Senator Julius C. Burrows

FOR IDAHO THE PATH TO STATEHOOD WAS AKIN TO THE BORDERS OF THE STATE ITSELF—some parts were smooth while others were jagged. The catalyst for the statehood movement was Fred T. Dubois, an up-and-coming politician who navigated his way across the political spectrum from Republican, to Silver Republican and eventually to becoming a Democrat. More consistent than his political alignment, though, was his flagrant disapproval of polygamists and Mormons. He used his anti-polygamy views as a platform to begin his political career, which would eventually peak on July 3, 1890 when the Territory of Idaho attained statehood (for more on Senator Dubois and “Test Oaths” see ILHS Newsletter Volume II, Issue 2, April 2010). However, prior to its inception into the Union, Idaho would undergo significant changes politically with respect to its boundaries, and Fred Dubois was instrumental in molding the territory into a state.



William H. Wallace
Idaho State Historical Society, ID: 1331

As a precursor to the effects that Dubois would have over the shape of Idaho was the competition between two political rivals: John Mullan and William H. Wallace. Each had visions of what the territory of Idaho would look like, and each drafted a

The State of Lincoln was proposed



map to submit before Congress. Mullan developed a map where the current panhandle of Idaho would become a part of Washington, and the northern portion of the territory (modern-day Montana) would be 'Dacotah' territory. Political reasons for these boundaries were motivated by a desire to move the capital of Washington from Olympia to Walla Walla. William H. Wallace's map retained the panhandle of Idaho, as well as all of modern-day Montana, and most of Wyoming. While Mullan's proposal originally passed the House of Representatives in 1863, Wallace's proposal garnered more support and passed both the Senate and then the House of Representatives after much debate, thus securing the panhandle for the territory of Idaho. Subsequently the Montana and Wyoming portions of the Idaho territory were portioned off due to how vast the Idaho territory was and how difficult it would be to govern a territory that large. Wallace's map served as the first of several efforts that would shape Idaho into the state we have today.

Aside from boundaries, political tensions were a hurdle on the path to Idaho statehood. By 1880, Idaho had a population of 32,610 and the territory was politically divided by a Republican majority in the north and a Democrat majority in the south. The Democratic power in the southern part of the territory was largely due to the influx of Mormons from Salt Lake City. This political divide was not attractive on a national level because of the uncertainties with respect to representation in Congress—the Republicans, who were the majority, wanted it to stay that way. Furthermore, there was widespread disapproval towards Mormons. Thus, while Idaho was pushing for statehood, the political division and the growing Mormon influence in the territory were seen as hampering Idaho's move towards statehood. Senator Julius C. Burrows emphatically stated: "[T]he most serious obstacle to my mind in the way of your [Idaho's] admission into the Union . . . is the question of Mormonism . . . Now your constitution will be very carefully scanned upon that question."

Recognizing the opportunity to advance politically, Dubois became a strong proponent of the controversial Test Oaths, which essentially pre-

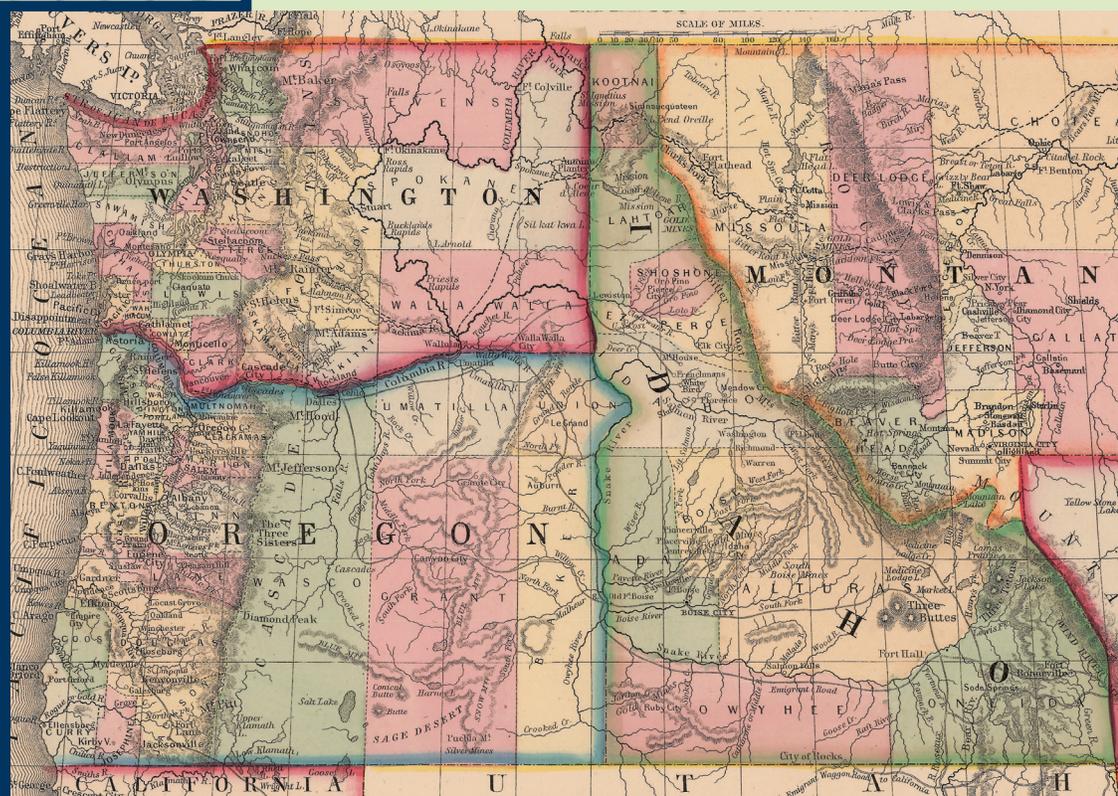
Continued on page 6



The Idaho Daily Statesman (top) mistakenly declared that Idaho was the 44th State to enter the Union—that title is reserved for Wyoming which achieved statehood seven days after Idaho did. Photo credit: Idaho State Historical Society, ID: MS511-73 photographed by Everett L. "Shorty" Fuller

The above 1863 map of the Territory of Idaho was created by William H. Wallace, the first governor of Idaho. The vast territory was difficult to govern and would eventually be divided up into the Dacotah and Wyoming territories. Photo credit: Idaho State Historical Society, ID: MAPIDAHOMITCHELL1860 by S. Augustus Mitchell

William H. Wallace, first Governor of Idaho, appointed Sidney Edgerton to Bannack, Territory of Idaho. Edgerton recognized the difficulties with a territory as vast as Idaho (pictured right) was at the time and successfully lobbied for its division which resulted in the Montana and Wyoming territories. Photo credit: Idaho State Historical Society, ID: MAPIDAHOMITCHELL1867 by S. Augustus Mitchell



ILHS ORAL
HISTORY COMMITTEE
Oral History Project Committee:

Dianne Cromwell, Chair
dcromwell@cableone.net

Chris Cuneo
ccuneo@parsonsbehle.com

Ernest A. Hoidal
eahoidal@hoidallaw.com

Libby Smith
clerk@id.uscourts.gov

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The First Chief Justice: The Birth of Idaho

IN 1863 PRESIDENT ABRAHAM LINCOLN APPOINTED SIDNEY EDGERTON to be the first Chief Justice of the Territory of Idaho. After traveling to Bannack, Idaho Territory, with his family, extended relatives and friends, Edgerton received notice that the capital would be located in Lewiston. With winter fast-approaching as the group descended down the Rocky Mountains, Edgerton discovered that his wife was pregnant, and by the time they reached Blackfoot River he made the decision to return to Bannack. In Bannack he met with Territorial Governor, William H. Wallace, who appointed him to a remote district of the territory to perform his duties as Chief Justice. Upon arriving, there was not even an administrator to give the oath of office and so technically Sidney Edgerton never officially became the Chief Justice—however this series of events would play a more significant role in shaping Idaho.

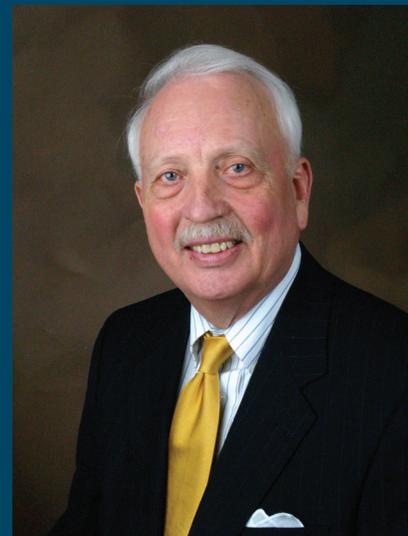
While in Bannack, with no cases to hear, Edgerton toured the gold mines and became close with the locals. In 1864 they chose him to go to D.C. to lobby for the division of the vast Territory of Idaho. With gold nuggets on hand, he traveled to D.C. and successfully lobbied for the division of Idaho, which resulted in three territories: the Territory of Idaho, the Territory of Montana, and the Territory of Dakota. This great divide would effectively carve out the shape of Idaho nearly exactly as it exists to this day—Idaho was born.

Meanwhile, as Edgerton was lobbying for the division of the Idaho Territory, his wife gave birth to a baby girl whom she named Idaho—the pregnancy caused Edgerton to turn back and not push forward to Lewiston. Unbeknownst to Mrs. Edgerton, though, was that her husband had effectively cut Bannack off from the Territory of Idaho. Thus, while the first-appointed Chief Justice of the Territory of Idaho heard no cases, his appointment and the series of events that led him to Bannack would leave a lasting impression on the borders of Idaho.

Sources: *The Appointment and Removal of Sidney Edgerton, First Governor of Montana Territory* W. Turrentine Jackson; *History of Washington, Idaho, and Montana: 1845–1889* Bancroft, Hubert Howe, Victor, Frances Fuller



Sidney Edgerton



Fred D. Hoopes, 2008

Fred is a native of Idaho, and was admitted to practice law in 1973 after graduating from law school at Texas Tech University in Lubbock. He attended undergraduate school at Brigham Young University and American University in Washington, D.C. while employed by the late Senator Frank F. Church. As part of the ILHS oral history project, attached is a portion of Fred's oral history taken by Katherine Moriarty in July, 2008:

A Message from the President Ernest A. Hoidal

THE IDAHO LEGAL HISTORY SOCIETY (ILHS) IS PROUD to celebrate the 125th anniversary of Idaho statehood as well as the 10th anniversary of the founding of the ILHS. This pivotal moment in the state's history has been documented and preserved by Idahoans. While one of our goals at the ILHS is to collect records, relics and oral histories relating to Idaho's legal history, it is also our goal to promote and increase the public's knowledge of such events. To commemorate the 10th anniversary, I would like to acknowledge the contributions of our past presidents: Judge Ronald E. Bush, Deb Kirstensen, Scott Reed and Judge Ronald Wilper. I would also like to thank Dianne Cromwell and Susie Headlee, our committee members, officers and board of directors, for the dedication, hard work, and support.

We encourage everyone to visit the ILHS exhibit at this year's Idaho State Bar annual meeting in Sun Valley Idaho at the Sun Valley Resort from July 22-24, 2015. The ILHS is always looking to take on new projects and write more articles on Idaho's legal history and so we implore our readers to contact the ILHS with ideas for future articles and research projects.



ILHS President Ernest A. Hoidal

With 125 years of Idaho statehood and 10 years of growth in the ILHS, we look forward to future endeavors in preserving and promoting Idaho's legal history. Finally, consider renewing your membership to continue supporting the ILHS, if you have yet to do so. Funding helps to support efforts to collect, preserve and publicize Idaho history. Furthermore, if you wish to volunteer or would like more information about the ILHS then please visit our website: <http://www.id.uscourts.gov/clerks/ilhs>.

20TH CENTURY PROFILE

Fred's Career Spanned Idaho and Chicago

So when did you decide you wanted to join league with Tim Hopkins?

Well, he and I had begun to spend quite a bit of time together primarily. We both had horses, both loved to fish, both did – he was a republican, and I was a democrat. But politically we were pretty close. I mean we, we thought a lot alike on a lot of issues.

Richard Nixon was still president, about to resign. The race between Ford and Carter was coming up. I can remember talking about that race with him and talking about those issues. Tim had been a delegate to the republican convention, a Nixon delegate; and I know he was disappointed in the revelations of Watergate.

In 1968 my dad was a delegate to the national convention in Chicago, and I was working for Senator Church and prevailed on him to let me go. So I got to go as an alternate and saw the, you know, the riots in Chicago when the – all of the things that came out of that convention.

And so Tim and I had kind of, though from different parties – similar – political experiences. Our ideology is somewhat different. I am more liberal than Tim is. Although he's getting more liberal, and I'm getting more conservative I think. But we were friends a long time before we were law partners.

Fred retired from the practice of law in 2013.

Thank You

WE WOULD LIKE TO THANK SUMMER LAW SCHOOL STUDENT JOHN WILTSE for assisting in the writing of our newsletter this issue. John grew up in South Carolina while spending summers in Grangeville, Idaho, and is now a second year law student at the University of Idaho College of Law, focusing on employment law. He enjoys spending his free time at



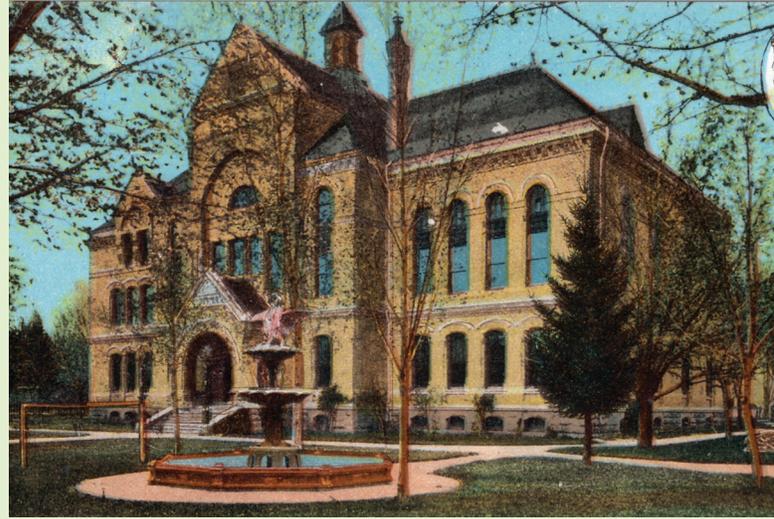
the park with his two boys. John is a summer extern for ILHS board member, Judge Candy Wagahoff Dale. Thank You Judge for making him available to assist us.

The territory was politically divided between northern Republicans and southern Democrats

vented Mormons from holding political office and prevented them from voting. The Test Oaths went into effect in 1885 and by 1886 Dubois was elected as a Republican for the sole Congressional Delegate seat from the territory of Idaho. The timing of his arrival was paramount to preserving the pan-handle of the territory since tensions were rising since the changing of the capital back in 1864.

On December 7, 1864, the capital of Idaho was moved from Lewiston to Boise. Moving the capital from Lewiston to Boise nearly had divisive repercussions. There was not only talk of branching off from the Territory of Idaho, but various proposals were also made—the most popular of which was to either remove the pan-handle from Idaho and make the ten northern-most counties a new state, or to have the pan-handle join Washington. The proposed State was the State of Lincoln, but this proposal failed. While the State of Lincoln failed early on, Washington, and northern Idahoans were adamant about including the panhandle of Idaho into Washington instead. Public support in northern Idaho was so strong in 1878 that 96% of voters in northern Idaho approved the proposal to combine the panhandle into Washington. In 1886, during his first year in Congress, Dubois was able to prevent the dismemberment of Idaho by proponents who sought to split the territory between Washington and Nevada. However, he could only delay them for so long and by 1887 it had passed both houses of Congress and merely needed the President Cleveland's signature. As a favor to Governor Edward A. Stevenson of the Idaho territory, President Cleveland pocket vetoed the bill. The combined efforts of these Idahoans preserved the pan-handle of the territory and potentially preserved the existence of Idaho itself.

The path to statehood would have been difficult, if not impossible at the time, without the support of the Republicans in Congress. With Dubois as a Congressional representative from the territory following the Republican stability in the state, national Republicans saw this as an opportunity to further increase Republican representation in Congress. Thus, after securing the Idaho territory's existence, Dubois was reelected in 1888, and began his push for Idaho statehood with the support of Republicans nation-wide. The process went smooth and quickly. The final decision for statehood occurred on July 2, 1890, when Dubois asked President Harrison to postpone signing the act that would grant Idaho statehood status until July 4, as opposed to July 3 as the president intended. The Presi-



dent informed Dubois that the stars on the flag were added on July 4 and that if he signed the act on the 4th then the star for Idaho would not be added until 1891. After taking a night to reflect on the issue Dubois requested that the President sign the act on July 3, 1890, and with that Idaho became the 43rd state to enter the Union.

After Idaho became a State, Dubois' political career waned and the lingering effects of his Test Oath legislation eventually went unenforced, thus fortunately re-instating the Mormons' right to vote in Idaho. While his actions were controversial, his efforts arguably expedited the path to statehood and preserved the shape of the state going forward, panhandle and all.



Sources: *The Political Suicide of Senator Fred T. Dubois of Idaho* Leo Graff; *Detailed Biography of Fred Dubois* by Leo Graff; *Origins of the Name "Idaho" and How Idaho Became a Territory in 1863* Merle Wells; *Historical Highway* Blythe Thimsen

Above, the first state legislature of Idaho after it achieved statehood. Photo credit: Idaho State Historical Society, ID: 60-142-10

Left, Fred T. Dubois was involved in politics as a Republican, a Silver Republican and a Democrat, who was a major proponent for Idaho statehood. He is a controversial figure in Idaho history due to his support of Test Oaths. Photo credit: Idaho State Historical Society, ID: 3150

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To foster and promote public knowledge of, and interest in, Idaho's legal history;

To promote and encourage research of Idaho's legal history;

To collect and preserve records, relics, oral histories and other things of interest to Idaho's legal history, and to make the same accessible for public examination;

To encourage interest in Idaho's legal history through meetings, presentations, lectures and other public forums;

To procure or publish and distribute historical material for educational purposes, the proceeds of which, if any, are to be used exclusively for the express purposes of the Association.

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